

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
TDD 303-866-3472



Sharon L. Eubanks, Deputy Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

## MEMORANDUM

**TO:** Kathleen Curry and Toni Larson  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** September 18, 2017  
**SUBJECT:** Proposed initiative measure 2017-2018 #50, concerning Congressional Redistricting

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

## Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To stop political gerrymandering;
2. To establish an independent congressional redistricting commission (the "Commission") to redraw the boundaries of congressional districts;

3. To specify the criteria that the Commission and its staff is to use in redrawing the congressional districts;
4. To establish the number of members of the Commission, their qualifications, and their method of appointment;
5. To authorize the Commission to adopt rules;
6. To specify that the Commission is subject to the "Colorado Open Records Act"; except that maps not submitted to the Commission are not public records, but that work product and communications between staff are public records once a plan is submitted to the supreme court;
7. To provide that the Commission is subject to the open meetings provisions of part 4 of article 6 of title 24, C.R.S.;
8. To prohibit:
  - a. Communications concerning Commission business outside of a public meeting involving three or more commissioners;
  - b. Communications between commissioners and the Commission staff concerning plans unless during a public meeting; and
  - c. Communications by Commission staff concerning any plan outside of a public meeting except with other staff members;
9. To require:
  - a. Any person who receives compensation for advocating to the Commission or its members to be deemed a professional lobbyist and subject to laws relating to professional lobbyists; and
  - b. At least eight affirmative votes from Commissioners for the adoption of any motion of the Commission;
10. To require staff to publish a preliminary plan within thirty days after the Commission is convened;
11. To conduct public hearings throughout the state, but authorizing remote hearings technology to be utilized for certain hearings;
12. After the public hearings, to require staff to prepare and present at least three plans to the Commission;

13. To require the Commission to finalize and submit its plan to the Colorado Supreme Court by a date specified; except that, if the Commission is unable to approve a plan by that date, staff is to submit its third plan to the district court;
14. To authorize the district court to make changes to the plan only if they improve compliance with the criteria established in the measure, to approve a plan, and to submit the plan to the supreme court;
15. To provide that the supreme court reviews the final plan for compliance with the criteria in the measure and may return a plan to the Commission for changes; and
16. If the Commission is unable to adopt a new plan, directs the staff to submit a plan that complies with the supreme court's directives.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. The previous section 2-1-101, C.R.S., which was repealed in 2017, described the congressional districts as established by the general assembly. It is the practice of the Office of Legislative Legal Services in drafting bills for the general assembly not to enact new law by recreating and reenacting previously repealed material unless the subject matter of the new material is similar to the subject matter of the former material. This is for historic purposes so that citizens can track repealed sections of law. Do the proponents believe that for historical purposes, it would be better to place the new proposed section 2-1-101 in a different location in article 2?
4. Do the proponents believe that the duty of the general assembly, under the Colorado constitution, to divide the state into congressional districts can be delegated to an independent commission through a statutory initiative?
5. Could two or more of the independent members of the Commission be from the same minor political party? If so, would that impact the independent balance of the Commission?

6. Is it the intent of the proponents that a member of the Commission can never have been a candidate for congress? Is it the intent of the proponents that if a person serves on the Commission, the person is barred from being a candidate for congress in the future?
7. The panel is to recommend applicants that it finds to be most qualified. What skills, knowledge, or experience do the proponents believe makes a person more or less qualified?
8. Under the last sentence in proposed section 2-2-102 (7), if the chief justice determines that none of the remaining applicants meet the requirements, can he or she appoint someone not on the list of applicants from the panel? If so, must the person have been an applicant considered by the panel?
9. The "State Administrative Procedures Act", article 4 of title 24, C.R.S., establishes procedures that a commission must follow when adopting rules. Is it the proponents' intent that the Commission comply with that Act when adopting its rules?
10. For purposes of determining the two largest political parties, should the secretary of state count both active and inactive registered electors?
11. If this measure passes and proposed initiative 2017-2018 #48 or #49 also passes, could the same staff be assigned to both commissions?
12. The measure provides that "Work product and communications between commission staff are subject to disclosure once a plan is submitted to the Supreme Court." Do the proponents intend that all work product and communications of the staff are subject to disclosure once the plan is submitted or only work product and communications related to the final plan?
13. Under the measure, would a professional journalist writing an editorial urging the Commission to adopt a certain plan or provision be considered a professional lobbyist?
14. Previous Commissions have divided the state into regions and held public hearings on each region before looking at preliminary plans for each region. Do the proponents anticipate that there will be similar hearings before the staff prepares its initial preliminary plan?
15. Is it the proponents' intent that staff will prepare and publish the preliminary plan without input from the Commission or public or does staff prepare an initial preliminary plan that is submitted to the Commission, is subject of a

- hearing at which Commissioners and the public may suggest changes to that initial plan, and that based on suggested changes staff will then prepare a final preliminary plan that is published and the subject of the public hearings?
16. If the Commission votes to amend a staff plan, is staff required to include that amendment in its next plan?
  17. If the Commission considers an amendment to a staff plan but does not affirmatively vote to adopt the amendment, may staff include the amendment in its next plan?
  18. When a member or group of members requests staff to prepare a new plan or an amendment to a plan at a public meeting, do the proponents anticipate that such a plan or amendment may be in an electronic format or just a description of the plan or changes requested?
  19. In order to avoid sliver precincts—that is, precincts that must be created because lines for congressional and state legislative districts are close but do not match—staff for previous commissions have altered Commission plans based on the final congressional redistricting plan. If this initiative is adopted and either Initiative 2017-2018 #48 or #49 is adopted, may staff for both Commissions communicate with one another about plans to avoid sliver precincts?
  20. The proposed section 2-1-105 (7) provides that if the Commission is unable to adopt a plan, staff is to submit its third plan to the district court. Is there a specific district court or may staff choose which district court to which it may submit its plan?
  21. The measure provides that the supreme court must approve a plan by December 30. Do the proponents believe that sixty-two days is sufficient time for county clerks to redraw precinct boundaries, potential candidates to know what district in which they reside, and voters to become familiar with the candidates prior the precinct caucuses?
  22. Under section 1-40-105.5, C.R.S., the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
    - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?

- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Section 1 of the proposed initiative relocates with amendments section 2-1-100.5, C.R.S., to section 2-1-102 (2), C.R.S. Section 2-1-100.5, C.R.S., should be repealed elsewhere in the initiative to remove duplicative language from statute.
2. In the text of the proposed initiative, the terms "secretary of state" and "secretary" are used interchangeably. The proponents might consider making this term uniform throughout in order to prevent any confusion.
3. Active voice should be used in drafting whenever possible, to accurately identify the actor responsible for an outcome.
4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "must" does not mean that a person has a duty." The proponents may consider whether the following uses of the word "shall" specify the person to whom the duty is assigned: 2-1-103 (1), (2), (3)(c), the introductory portion to (6), (7)(a), (7)(c), (7)(d) [twice], (7)(e), (7)(h)(II), (7)(h)(III) [twice]; 2-1-104 (4) and (7)(e).
5. For the section 2 amending clause, the wording should read:

**"SECTION 2. In Colorado Revised Statutes, 2-1-102, amend (1); and add with amended and relocated provisions (2) as follows:"**

6. Standard drafting practice places stricken language before any new language. In the proposed initiative, section 2-1-102 (1)(b), C.R.S., should read:

~~"(b) May, without weight to any factor, utilize~~ CONSIDER THE FOLLOWING factors, ~~including but not limited to~~ WITHOUT WEIGHT TO ANY FACTOR:

7. OLLS has recently updated how it drafts internal references in statute:
- a. Part, article, and title numbers should be added when making internal references (e.g., "section 46 (2) of this article V" rather than "section 46 (2) of this article" or "as used in this title 2" rather than "as used in this title").
  - b. Subsections of statute are now referred to directly (e.g., "subsection (6)(b) of this section" rather than "paragraph (b) of subsection (6) of this section").
  - c. When referring to a section, part, article, or title within the Colorado Revised Statutes, it is not necessary to include "C.R.S." at the end of the cite.
8. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate.
- a. The following should be large-capitalized:
    - i. The first letter of the first word of each sentence; [2-1-102 (c) and 2-1-104 (6)(b)]
    - ii. The first letter of the first word of each entry of an enumeration paragraphed after a colon; [2-1-103 (5)(b)(I) and (II)] and
    - iii. The first letter of proper names.
  - b. You do not need to large capitalize the following:
    - i. "County" in "El Paso county".
    - ii. "Continental Divide".
9. Numbers should be written out, rather than using digits. [2-1-104 (10) and 2-1-105 (4)]

10. Subsection 2-1-103 (6) does not conform with standard drafting practices. The initial language in the subsection appear to be an introductory portion before (a) through (d). However, it does not end with a colon indicating that it is an introductory portion. Either it should be rewritten so that it ends with a colon, or that language should be in a paragraph (a) and the subsequent paragraphs relettered.